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## BY FAX

Hon. P. Kevin Castel, U.S.D.J.  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007Re: **Luminent Mortgage Capital, Inc. et al. v. HSBC Securities (USA) Inc.**  
07 Civ. 9340 (PKC)

Your Honor:

This office represents Plaintiffs in the above captioned matter. We are in receipt of Defendant's letter to the Court of today. As a preliminary matter, this is the second time in the relatively short history of this litigation that Defendant has blatantly violated this Court's orders regarding the resolution of discovery disputes. In orders dated February 4<sup>th</sup> and February 28<sup>th</sup>, this Court made absolutely clear that before any discovery issues were submitted to the Court for resolution, the parties were required to confer, and exchange drafts (multiple drafts, if necessary) of a joint dispute letter. The process ordered by the Court was obviously designed to maximize the chances that the parties could resolve their differences without burdening the Court. On March 19<sup>th</sup>, Defendant violated these orders for the first time, as pointed out in Plaintiffs' letter of the same date. (Exhibit I.) Now, Defendant has again ignored this Court's repeated and express directives.

Plaintiffs write primarily to request until close of business on Monday to respond to Defendant's letter. We first received the letter at 6:42 p.m. on the Friday before Labor Day weekend. As a result, we did not see it until Tuesday morning – two days ago. Defendant's counsel, apparently believing that they have the right to dictate our schedule, insisted on a response by Friday morning at 10 am, despite the fact that we offered compromises on the outstanding issues yesterday that Defendant flatly rejected within hours. Our office has a complex brief due in a federal securities matter venued in the District of Connecticut due today, and another on Monday (also a federal securities action venued in the Eastern District of Pennsylvania). Accordingly, we are neither able nor required to meet Defendant's unilaterally imposed timetable.

Obviously, it is critical that Plaintiffs be accorded the right to be heard on the issues raised in Defendants' letter. As we will explain in detail in our response, Defendant's letter is literally overflowing with misleading statements and outright misrepresentations to the Court. For example:

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*Plaintiffs' counsel need not be concerned about any letter to the Court regarding a discovery dispute. None has been received. Defendant's counsel is no doubt aware of the Court's order of February 4, 2008 and will contact plaintiff's counsel with a view towards resolution of any dispute.*

*May 26, 2008*

*SO ORDERED*

*USDT*

*5-29-08*

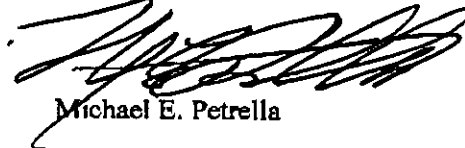
- Defendant claims that it has been attempting to contact Plaintiffs for three weeks regarding the issues raised in its letter, and that Plaintiffs have not responded. In reality, the parties just had an extended, detailed conference call on virtually all of the issues raised by Defendant on May 13<sup>th</sup>. During that conference, Plaintiffs' counsel advised Defendant that they would need some time to gather information from their clients. Specifically, Plaintiffs indicated that, in order to respond to Defendant's demands, they would first have to gather certain information, and determine the number of electronic documents that would have to be reviewed to comply with Defendant's request. That process, of necessity, required client input, and considerable work by Plaintiff's IT personnel.
- Defendant's letter raises one issue (regarding searches of multiple additional custodians) that it has never so much as *mentioned* to Plaintiffs' counsel. This is a clear violation of this Court's February 4<sup>th</sup> and February 28<sup>th</sup> orders.
- Defendant's letter raises at least one issue (regarding Bloomberg transmissions) that the parties had already resolved during the May 13<sup>th</sup> conference. Defendant's counsel, Mr. Rosenthal, not only acknowledged as much, but also expressly stated that he would not raise the issue with the Court, as he considered it resolved.

Defendant's substantive arguments are also badly flawed, as we will demonstrate in our response when it is submitted to the Court. However, we certainly believe that an exchange of joint letters in accordance with the Court's prescribed procedure would go a long way toward reducing, if not eliminating, the current areas of dispute.

Based on the foregoing, Plaintiffs request the following relief:

- (a) An order striking Defendant's letter and directing it proceed in a manner consistent with this Court's February 4<sup>th</sup> and February 28<sup>th</sup> orders, or
- (b) Alternatively, an order permitting Plaintiffs to respond to Defendant's letter by close of business Monday, and precluding Defendant from submitting a reply as sanction for its violation of this Court's orders; and
- (c) An order admonishing Defendant's counsel to comply with this Court's February 4<sup>th</sup> and February 28<sup>th</sup> orders going forward.

Respectfully submitted,



Michael E. Petrella

cc: Jeffrey Rosenthal, Esq. (via e-mail)